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11

12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
13 **SAN FRANCISCO DIVISION**

14 CHRISTIAN GILSTRAP, CYNTHIA J.)
TYLER, THOMAS FRIEDMAN, JEREMY)
15 SHEPPECK, ALOYSIUS J. BROWN, III,)
16 ANNE M. RINALDI, LAURA J. WARNER,)
BARBARA HEATH, KATHLEEN LINDA)
17 PITLOCK, KATHLEEN WEISS, MATTHEW)
A. HOSKING, DIANE URBANEC, ED)
18 MACAULEY, RONNA HAMELIN, JAMES)
L. NESMITH, LAUREN ALBERT, SUE)
19 ROBERTS, SHANE S. DAVIS, SUE ELLEN)
GORDON, CHARLES LEONARD PELTON,)
20 SR, KIMBERLY WHITESIDE BROOKS,)
STEVEN D. CAMPBELL, and JESSICA)
21 MOYER, Individually and on Behalf of All)
22 Others Similarly Situated,)

23 Plaintiffs,)

24 vs.)

25 APPLE INC.; HACHETTE BOOK GROUP,)
INC.; HARPERCOLLINS PUBLISHERS,)
26 INC.; MACMILLAN PUBLISHERS, INC.;)
PENGUIN GROUP (USA) INC.; and SIMON)
27 & SCHUSTER, INC.,)

28 Defendants.)

CASE NO. 3:11-CV-04035-EMC

**STIPULATION AND [PROPOSED]
ORDER REGARDING (1) EXTENDING
TIME TO RESPOND TO THE
COMPLAINT AND (2) CASE
COORDINATION**

**STIPULATION AND [PROPOSED] ORDER REGARDING (1) EXTENDING TIME TO
RESPOND TO THE COMPLAINT AND (2) CASE COORDINATION**

WHEREAS, there have been multiple actions related to the above-captioned action filed in both the Northern District of California and the Southern District of New York (the “Actions”);

WHEREAS, on September 2, 2011, the Court related the above-captioned action to *Petru, et. al. v. Apple, Inc., et al.*, C.A. No. 3:11-03892 (N. D. Cal.);

WHEREAS, on September 9, 2011, the court in the New York Actions entered a stipulation and order providing the time for defendants Hachette Book Group, Inc., HarperCollins Publishers L.L.C. (incorrectly sued as “HarperCollins Publishers, Inc.”), Holtzbrinck Publishers, LLC d/b/a Macmillan (incorrectly sued as Macmillan Publishers, Inc.), Penguin Group (USA) Inc., Simon & Schuster, Inc., and Apple, Inc. (collectively, “Defendants”) to answer, move, or otherwise respond to the complaints in the New York Actions would be enlarged to the 60th day after the Actions have been consolidated in a single forum and a consolidated amended complaint has been filed (or lead plaintiffs’ counsel has announced by filed notice that it will not be filing a consolidated amended complaint);

WHEREAS, on September 16, 2011, the Court entered an order providing that the time for Defendants to answer, move, or otherwise respond to the complaint in this action would be enlarged until December 15, 2011, and without prejudice to Defendants seeking a further enlargement of the time to answer, move, or otherwise respond;

WHEREAS, pursuant to the Clerk’s Notice dated November 2, 2011, the Initial Case Management Conference in the above-captioned action is scheduled for January 6, 2012;

WHEREAS, on December 9, 2011, the Judicial Panel on Multidistrict Litigation (the “JPML”) issued an order pursuant to 28 U.S.C. § 1407 to transfer *Petru, et. al. v. Apple, Inc., et al.*, C.A. No. 3:11-03892 and *Diamond, et al. v. Apple, Inc., et al.*, C.A. No. 3:11-03954, currently pending in the Northern District of California, to the Southern District of New York and assign them to the Honorable Denise L. Cote for coordinated and consolidated pretrial proceedings

1 with the actions already pending in the Southern District of New York, *In re Electronic Books*
 2 *Antitrust Litigation*, MDL Docket No. 2293 (the “Consolidated New York Actions”);

3 WHEREAS, on December 9, 2011, counsel, who purported to act on behalf of
 4 plaintiffs in ten of the eleven Actions filed in this Court, sent a letter to Judge Cote regarding case
 5 administration of the Actions;

6 WHEREAS, lead plaintiffs’ counsel has not yet been appointed in the Consolidated
 7 New York Actions;

8 WHEREAS, the parties anticipate that the remaining Actions currently pending in
 9 this Court will be transferred to Judge Cote for coordinated and consolidated pretrial proceedings
 10 with the Consolidated New York Actions;

11 WHEREAS, the parties have agreed that the response date in this action should not
 12 come prior to the response date stipulated to in the Consolidated New York Actions;

13 WHEREAS, the parties have agreed that further case administration should take
 14 place in connection with the Consolidated New York Actions;

15 WHEREAS, the parties agree that submission of this Stipulation should be without
 16 prejudice to any of Plaintiffs’ claims or Defendants’ defenses;

17 WHEREAS, unless otherwise provided for herein, this Stipulation will not modify
 18 the schedule of this case;

19 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and
 20 between Plaintiffs and Defendants, as follows:

21 1. Pursuant to Civil Local Rules 6-1, 6-2 and 7-12, Defendants’ time to answer,
 22 move, or otherwise respond to the complaint is hereby extended to the 60th day after a
 23 consolidated amended complaint has been filed in the Consolidated New York Actions (or lead
 24 plaintiffs’ counsel has announced by filed notice that it will not be filing a consolidated amended
 25 complaint);

26 2. Pursuant to Civil Local Rules 16-2 and 7-12, the parties hereby stipulate that
 27 the Initial Case Management Conference with this Court scheduled for January 6, 2011, should be
 28 taken off calendar, as well as all dates required under Federal Rules of Civil Procedure 16 and 26

1 related to that Initial Case Management Conference, without prejudice to Plaintiffs' and
 2 Defendants' positions as to the dates on which these events should occur in the Consolidated New
 3 York Actions;

4 3. Further case administration, including the negotiation of any brief scheduling
 5 beyond the time for Defendants' time to answer, move, or otherwise respond to the complaint and
 6 any pre-trial conferences governed by Federal Rules of Civil Procedure 16 and 26, shall occur in
 7 connection with the Consolidated New York Actions;

8 4. If any of the Defendants that are a party to this Stipulation responds to a
 9 complaint in any of the Actions prior to the time provided in this Stipulation, Defendants will
 10 respond to the complaint in this action at the same time;

11 5. None of Plaintiffs' claims or Defendants' defenses are prejudiced or waived
 12 by its submission of this Stipulation; and

13 6. This stipulation is without prejudice to the right of any party to seek a further
 14 adjustment to any of the dates contained in this stipulation based on future developments

15 DATED: December 13, 2011

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24 I, Raoul D. Kennedy, am the ECF User whose ID and password are being used to file this
 25 Stipulation and [Proposed] Order Regarding: (1) Extending Time to Respond to the Complaint and
 26 (2) Case Coordination. In compliance with General Order 45, X.B., I hereby attest that each of the
 27 following signatories has concurred in this filing.
 28

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Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED. The CMC is reset from 1/6/12 to
7/6/12 at 9:00 a.m.

Dated: 12/16, 2011

By: Hon. Edward M. Chen
U.S. DISTRICT COURT JUDGE

